Nursing Home Conditions on Long Island:
Many Homes Fail to Meet Federal Standards for Adequate Care

Prepared for Rep. Michael P. Forbes

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EXECUTIVE SUMMARY

Many families are becoming increasingly concerned about the conditions in nursing homes. Federal law requires that nursing homes "provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident." But recent studies by the U.S. General Accounting Office and others have indicated that many nursing homes fail to meet federal health and safety standards.

To address these growing concerns, Rep. Michael P. Forbes asked the minority staff of the Committee on Government Reform to investigate the conditions in nursing homes on Long Island. There are 69 nursing homes in the Nassau and Suffolk Counties that accept residents covered by Medicaid or Medicare. These homes serve over 14,000 residents. This is the first report to evaluate their compliance with federal nursing home standards.

The report finds that there are serious deficiencies in many Long Island nursing homes. Over 40% of the nursing homes in Nassau and Suffolk Counties were not in full or substantial compliance with federal standards during their most recent annual inspection. Moreover, 17% percent of the nursing homes -- one out of every six -- had violations that caused actual harm to residents.

Moreover, it is likely that the current state of nursing home conditions on Long Island may be worse than the data reflected in this report. Experts believe that the New York State Department of Health -- the agency in charge of regulating nursing homes in New York -- has failed to properly enforce federal quality of care standards in recent years. Consequently, the prevalence of violations in nursing homes on Long Island may be higher than reported in this study.

A. Methodology

Under federal law, the U.S. Department of Health and Human Services contracts with the states to conduct annual inspections of nursing homes. These inspections assess whether nursing homes are meeting federal standards of care, such as preventing residents from developing pressure sores (commonly known as bed sores), providing sanitary living conditions, and protecting residents from accidents. State inspectors are instructed to rate the scope and severity of each violation. There are four general categories of violations: (1) violations that have the potential for only minimal harm; (2) violations that have the potential for more than minimal harm; (3) violations that cause actual harm; and (4) violations that cause death or have the potential to cause death or serious injury.

This report is based on an analysis of the most recent annual inspections of nursing homes in Nassau and Suffolk Counties. These inspections were conducted from January 1998 to March 2000. When a nursing home was reported to have serious violations, the report also examined the results from the prior round of inspections to assess the home's compliance history.

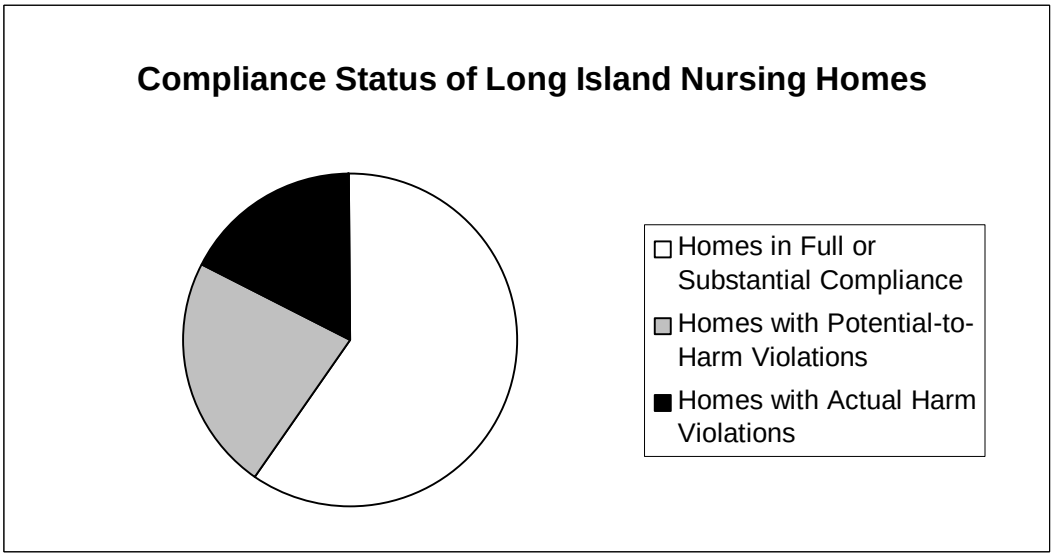
Because this report is based on recent annual inspections, the results are representative of

current nursing home conditions on Long Island as a whole. However, conditions in individual homes can change. New management or enforcement activities can bring rapid improvement; other changes can lead to sudden deterioration. For this reason, the report should be considered a representative "snapshot" of overall conditions in Long Island nursing homes, not an analysis of current conditions in any specific home.

B. Findings

Many nursing homes on Long Island violate federal standards governing quality of care. State inspectors consider a nursing home to be in full compliance with federal standards if no violations are detected during the annual inspection. They will consider a home to be in "substantial compliance" with federal standards if the violations at the home do not have the potential to cause more than minimal harm. Of the 69 nursing homes in Nassau and Suffolk Counties, only 41 homes (59%) were found to be in full or substantial compliance with the federal standards. In contrast, 28 nursing homes (41%) had at least one violation with the potential to cause more than minimal harm to residents. On average, each of these 28 nursing homes had 4.5 violations of federal quality of care requirements.

A significant number of Long Island nursing homes have violations that cause actual harm to residents. Of the 69 nursing homes in Nassau and Suffolk Counties, 12 homes (17%) had violations that caused actual harm to nursing home residents (see Figure 1). These deficiencies involved serious care problems. The most frequently cited violations causing actual harm involved the failure to provide each resident the proper treatment for pressure sores and the failure to prevent abuse of residents. The 12 homes with actual harm violations serve 3,597 residents and are estimated to receive approximately $107 million each year in federal and state funds.



Several nursing homes on Long Island have multiple or repeat violations that cause actual harm. Seven nursing homes in Nassau and Suffolk Counties were cited for more than one violation that caused actual harm to residents. Moreover, five of the 12 homes cited for actual harm violations in the most recent annual inspection also had actual harm violations in the previous year's inspection.

An examination of the homes with significant violations showed serious care problems. Representatives of nursing homes argue that the "overwhelming majority" of nursing homes meet government standards and that many violations causing actual harm are actually trivial in nature. To assess these claims, this report examined in detail the inspection reports for 23 homes that were not in full or substantial compliance. The inspection reports documented that the actual harm violations cited by state inspectors were for serious neglect and mistreatment of residents, including untreated pressure sores, abuse of residents, preventable accidents, and inadequate medical care. Moreover, the inspection reports documented other serious violations that would be of great concern to families, but were not classified as causing actual harm, indicating that serious deficiencies can exist at nursing homes cited for potential-to-harm violations.

Serious care problems in Long Island homes may be worse than reported in this study. Research by the U.S. General Accounting Office has indicated that nursing home inspectors around the country often miss significant violations when they conduct their inspections. In particular, New York state inspectors have been criticized by both federal regulators and nursing home advocates for their failure to properly identify serious violations such as pressure sores and improper use of restraints. Consequently, the prevalence of violations causing harm to New York nursing home residents may be higher than reported in this study.

I. GROWING CONCERNS ABOUT NURSING HOME CONDITIONS

Increasingly, Americans are facing difficult decisions about nursing homes. The decision to move a loved one into a nursing home raises very real questions about how the resident will be treated at the nursing home. Will the resident receive proper food and medical treatment? Will the resident be assisted by staff with basic daily activities, such as bathing and dressing? Will the resident be able to live out his or her life with dignity and compassion? These are all legitimate concerns -- and they are becoming more common as America ages.

In 1966, there were 19 million Americans 65 years of age and older.[1] That figure has now risen to 34.6 million Americans, or 13% of the population.[2] In 25 years, the number of Americans aged 65 and older will increase to 62 million, nearly 20% of the population.[3]

This aging population will increase demands for long-term care. There are currently 1.6 million people living in almost 17,000 nursing homes in the United States.[4] The Department of Health and Human Services (HHS) has estimated that 43% of all 65 year olds will use a nursing home at some point during their lives.[5] Of those who do need the services of a nursing home, more than half will require stays of over one year, and over 20% will be in a nursing home for more than five years. The total number of nursing home residents is expected to quadruple from the current 1.6 million to 6.6 million by 2050.[6]

Most nursing homes are run by private for-profit companies. Of the 17,000 nursing homes in the United States, over 11,000 (65%) are operated by for-profit companies. In the 1990s, the nursing home industry witnessed a trend toward consolidation as large national chains

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[1]Health Care Financing Administration, *Medicare Enrollment Trends, 1966-1998* (available at http://www.hcfa.gov/stats/enrltrnd.htm).

[2]U.S. Census Bureau, *Resident Population Estimates of the United States by Age and Sex: April 1, 1990 to August 1, 1999* (Oct. 1, 1999).

[3]U.S. Census Bureau, *Resident Population of the United States: Middle Series Projections, 2015 - 2030, by Age and Sex* (March 1996).

[4]Testimony of Rachel Block, Deputy Director of HCFA's Center for Medicaid, before the Senate Special Committee on Aging (June 30, 1999).

[5]HCFA Report to Congress, *Study of Private Accreditation (Deeming) of Nursing Homes, Regulatory Incentives and Non-Regulatory Initiatives, and Effectiveness of the Survey and Certification System*, §1.1 (July 21, 1998).

[6]American Health Care Association, *Facts and Trends: The Nursing Facility Sourcebook*, 5 (1999).

bought up smaller chains and independent homes. The five largest nursing home chains in the United States operated over 2,000 facilities and had revenues of nearly $14 billion in 1998.[7]

Through the Medicaid and Medicare programs, the federal government is the largest payer of nursing home care. Under the Medicaid program, a jointly funded, federal-state health care program for the needy, all nursing home and related expenses are covered for qualified individuals. Under the Medicare program, a federal program for the elderly and certain disabled persons, skilled nursing services are partially covered for up to 100 days. In 2000, it is projected that federal, state, and local governments will spend $58.1 billion on nursing home care, of which $44.9 billion will come from Medicaid payments ($27.7 billion from the federal government and $17.2 billion from state governments) and $11.2 billion from federal Medicare payments. Private expenditures for nursing home care are estimated to be $36 billion ($29.2 billion from residents and their families, $5 billion from insurance policies, and $1.8 billion from other private funds).[8] The overwhelming majority of nursing homes in the United States receive funding through either the Medicaid program or the Medicare program, or both.

Under federal law, nursing homes that receive Medicaid or Medicare funds must meet federal standards of care. Prior to 1987, these standards were relatively weak: they focused on a home's ability to provide adequate care, rather than on the level of care actually provided. In 1986, a landmark report by the Institute of Medicine found widespread abuses in nursing homes.[9] This report, coupled with national concern over substandard conditions, led Congress to pass comprehensive legislation in 1987 establishing new standards for nursing homes. This law required nursing homes to "provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident."[10]

Implementing regulations were promulgated by HHS in 1990 and 1995. The 1987 law and the implementing regulations limit the use of physical and chemical restraints on nursing home residents. They require nursing homes to prevent pressure sores, which are painful wounds or bruises caused by pressure or friction that can become infected. They also establish other safety

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[7]Thomas J. Cole, *Awash in Red Ink,* Albuquerque Journal, A1 (Aug. 3, 1999).

[8]All cost projections come from: HCFA, *Nursing Home Care Expenditures and Average Annual Percent Change, by Source of Funds: Selected Calender Years 1970-2008* (available at http://www.hcfa.gov/stats/NHE-Proj/proj1998/tables/table14a.htm).

[9]Committee on Nursing Home Regulation, Institute of Medicine, *Improving the Quality of Care in Nursing Homes* (1986). The IOM report concluded: "[I]ndividuals who are admitted receive very inadequate -- sometimes shockingly deficient -- care that is likely to hasten the deterioration of their physical, mental, and emotional health. They are also likely to have their rights ignored or violated, and may even be subject to physical abuse." *Id.* at 2-3.

[10]42 U.S.C. 1396r(b)(2).

and health standards for nursing homes, such as requiring that residents are properly cleaned and bathed, receive appropriate medical care, and are supervised to prevent falls and accidents. The regulatory requirements are codified at 42 C.F.R. Part 483.

Recently, investigators have begun to examine whether nursing homes are meeting the requirements of the 1987 law and its implementing regulations. The results have not been encouraging. Certain abusive practices documented by the Institute of Medicine in 1986, such as the improper use of physical restraints and anti-psychotic drugs, have been reduced.[11] But health and safety violations appear to be widespread. In a series of recent reports, the U.S. General Accounting Office (GAO), an investigative arm of Congress, found that "more than one-fourth of the homes had deficiencies that caused actual harm to residents or placed them at risk of death or serious injury";[12] that these incidents of actual harm "represented serious care issues ... such as pressure sores, broken bones, severe weight loss, and death";[13] and that "[s]erious complaints alleging that nursing home residents are being harmed can remain uninvestigated for weeks or months."[14]

Other researchers have reached similar conclusions. In July 1998, Professor Charlene Harrington of the University of California-San Francisco, a leading nursing home expert, found that the current level of nursing home staffing is "completely inadequate to provide care and supervision."[15] In March 1999, the inspector general of HHS found an increasing number of serious deficiencies relating to the quality of resident care.[16] And in September 1999, the Coalition to Protect America's Elders concluded: "Every day, thousands of frail elderly Americans are endangered by nursing home abuse and neglect that have reached epidemic

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[11]The percent of residents in physical restraints dropped from 38% in 1987 to 15% in 1998; the percent of residents being administered anti-psychotic drugs dropped from 33% to 16% during the same time period. Testimony of Michael Hash, Deputy Administrator of HCFA, before the Senate Special Committee on Aging (July 28, 1998).

[12]GAO, *Nursing Homes: Additional Steps Needed to Strengthen Enforcement of Federal Quality Standards*, 3 (March 1999).

[13]GAO, *Nursing Homes: Proposal to Enhance Oversight of Poorly Performing Homes Has Merit*, 2 (June 1999).

[14]GAO, *Nursing Homes: Complaint Investigation Processes Often Inadequate to Protect Residents*, 2 (March 1999).

[15]Testimony of Charlene Harrington before the Senate Special Committee on Aging (July 28, 1998).

[16]HHS Office of Inspector General, *Nursing Home Survey and Certification* (Mar. 1999).

proportions."[17]

In light of the growing concern about nursing home conditions, Rep. Michael P. Forbes asked the minority staff of the Government Reform Committee to investigate the prevalence of health and safety violations in nursing homes on Long Island. Rep. Forbes represents the 1st Congressional District of New York, which consists of the eastern portion of Suffolk County. This report presents the results of this investigation. It is the first report to comprehensively investigate nursing home conditions on Long Island.

II. METHODOLOGY

To assess the conditions in Long Island nursing homes, this report analyzed two sets of data: (1) the Online Survey, Certification, and Reporting (OSCAR) database maintained by HHS, which compiles the results of nursing home inspections; and (2) actual state inspection reports for Long Island nursing homes.

A. Analysis of the OSCAR Database

Operating through the Health Care Financing Administration (HCFA), which administers the federal Medicaid and Medicare programs, HHS contracts with states to conduct annual inspections of nursing homes. During these inspections, the inspection team interviews a sample of residents, staff members, and family members. The inspection team also reviews a sample of clinical records. Violations of federal standards observed by the inspectors are cited by the inspection team, reported by the states to HCFA, and compiled in the OSCAR database.[18]

HCFA has established a ranking system in order to identify the violations that pose the greatest risk to residents. This ranking system is used by state inspectors, and the rankings are included in the OSCAR database. The rankings are based on the severity (degree of actual harm to residents) and the scope (the number of residents affected) of the violation. As shown in Table 1, each violation is given a letter rank, A to L, with A being the least serious (an isolated violation that poses minimal risks to residents) and L being the most serious (a widespread violation that causes or has the potential to cause death or serious injury). Homes with violations

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[17]Coalition to Protect America's Elders, *America's Secret Crisis: The Tragedy of Nursing Home Care*, 6 (Sept. 14, 1999).

[18]In addition to tracking the violations at each home, the HCFA database compiles the following information about each home: the number of residents and beds; the type of ownership (*e.g.*, for-profit or nonprofit); whether the home accepts residents on Medicare and/or Medicaid; and the characteristics of the resident population (*e.g.*, number of incontinent residents, number of residents in restraints). To provide public access to this information, HCFA maintains a website (http://www.medicare.gov/nhcompare/home.asp) where the public can obtain data about individual nursing homes.

in categories A, B, or C are considered to be in "substantial compliance" with the law. Homes with violations in categories D, E, or F have the potential to cause "more than minimal harm" to residents. Homes with violations in categories G, H, or I are causing "actual harm" to residents. And homes with violations in categories J, K, or L are causing (or have the potential to cause) death or serious injury to residents.

Table 1: HCFA's Scope and Severity Grid for Nursing Home Violations

Severity of Deficiency	Scope of Deficiency		
	Isolated	*Pattern of Harm*	*Widespread Harm*
Potential for Minimal Harm	A	B	C
Potential for More Than Minimal Harm	D	E	F
Actual Harm	G	H	I
Actual or Potential for Death/Serious Injury	J	K	L

This report analyzed the results, as reported in the OSCAR database, of the most recent state inspections of each nursing home in Nassau and Suffolk Counties. These inspections were conducted between January 1998 and March 2000. Following the approach used by GAO in its reports on nursing home conditions, this report focused primarily on violations ranked in category G or above. These are the violations that cause actual harm to residents or have the potential to cause death or serious injury.

In cases where nursing homes were reported to have violations causing actual harm to residents in the most recent inspection, the report also analyzed the results of the previous inspection of the nursing home. This analysis was undertaken to assess whether there was a pattern of noncompliance at Long Island nursing homes.

B. Analysis of State and Federal Inspection Reports

In addition to analyzing the data in the OSCAR database, this report analyzed a sample of the actual inspection reports prepared by federal and state inspectors of Long Island nursing homes. These inspection reports, prepared on a HCFA form called "Form 2567," contain the inspectors' documentation of the conditions at the nursing home.

The minority staff selected for review the inspection reports of 23 nursing homes in Nassau and Suffolk County that were not in full or substantial compliance with federal standards. For each of these homes, the most recent state inspection report was obtained from the New York State Department of Health. One of the 23 homes was also inspected by federal regulators, and this inspection report was obtained from the HCFA regional office that supervises New York nursing homes. These 24 reports were then reviewed to assess the severity of the violations documented by inspectors.

C. Interpretation of Results

The results presented in this report are representative of current conditions in Long Island nursing homes as a whole. In the case of any individual home, however, current conditions may differ from those documented in the most recent annual inspection report, especially if the report is more than few months old. Nursing home conditions can change over time. New management or enforcement activities can rapidly improve conditions; other changes can lead to sudden deterioration. According to GAO, many nursing homes with serious deficiencies exhibit a "yo-yo pattern" of noncompliance and compliance: after a home is cited for deficiencies, it briefly comes into compliance to avoid fines or other sanctions, only to slip into noncompliance after the threat of sanctions is removed.[19]

For this reason, this report should be considered a representative "snapshot" of nursing home conditions on Long Island. It is not intended to be -- and should not be interpreted as -- an analysis of current conditions in any individual nursing home.

III. NURSING HOME CONDITIONS ON LONG ISLAND

There are 69 nursing homes in the Nassau and Suffolk Counties that accept residents whose care is paid for by Medicaid or Medicare. These nursing homes have 15,022 beds that were occupied by 14,347 residents during the most recent round of inspections. The majority of these residents, 10,107, rely on Medicaid to pay for their nursing home care. Medicare pays the cost of care for 2,071 residents. Seventy-five percent of the 69 nursing homes in Nassau and Suffolk Counties are private for-profit nursing homes.

The results of this investigation indicate that the conditions in these nursing homes often fall substantially below federal standards. Many residents are not receiving the care that their families expect and that federal law requires.

A. Prevalence of Violations

Only 59% of the nursing homes in Nassau and Suffolk Counties were found by the state inspections to be in full or substantial compliance with federal standards of care. The rest of the nursing homes in the two counties -- 28 homes or 41% of all homes -- had at least one violation that had the potential to cause more than minimal harm to their residents. Twelve had violations that caused actual harm to residents. Table 2 summarizes these results.

[19]GAO, *Nursing Homes: Additional Steps Needed*, *supra* note 12, at 12-14.

Table 2: Long Island Nursing Homes Have Numerous Violations that Place Residents at Risk

Most Severe Violation Cited by Inspectors	Number of Homes	Percent of Homes	Number of Residents
Complete Compliance (No Violations)	37	54%	7,474
Substantial Compliance (Risk of Minimal Harm)	4	6%	554
Potential for More than Minimal Harm	16	23%	2,722
Actual Harm to Residents	12	17%	3,597
Actual or Potential Death/Serious Injury	0	0%	0

Many nursing homes had multiple violations. During the most recent annual inspections, state inspectors found a total of 125 violations in homes that were not in complete or substantial compliance with federal requirements, or an average of 4.5 violations per noncompliant home.

B. Prevalence of Violations Causing Actual Harm to Residents

According to the GAO, some of the greatest safety concerns are posed by nursing homes with violations that cause actual harm to residents or have the potential to cause death or serious injury. These are homes with violations ranked at the G-level or above. As shown in table 2, 12 nursing homes on Long Island had violations that fell into this category. Seven nursing homes had two or more actual harm violations. In total, 17% of the nursing homes in the district -- more than one in six -- caused actual harm to residents. These homes serve 3,597 residents and are estimated to receive approximately $107 million in federal and state funds each year.

C. Most Frequently Cited Violations Causing Actual Harm

During the most recent annual inspections, state inspectors cited Long Island nursing homes for 26 violations causing actual harm to residents. These violations fell into 16 different deficiency areas.

One of the most frequently cited violation causing actual harm involved pressure sores. Pressure sores are open sores or bruises on the skin (usually on the hips, heels, buttocks, or bony areas) which result from friction or pressure on the skin. Not only are pressure sores painful, but they can lead to infection, increased debilitation, damage to muscle and bone, and even death. According to nursing home experts, good nursing care can often prevent pressure sores through simple precautions, such as regular cleaning, application of ointments and dressings, special diets, and frequent turning of residents to relieve pressure on one part of the body. Despite the availability of these precautions, six nursing homes on Long Island were cited for actual harm violations for their failure to ensure that residents do not develop pressure sores or to provide "necessary treatment and services to promote healing, prevent infection and prevent new sores from developing."[20]

[20] 42 C.F.R. §483.25(c).

Another frequently cited category of violations was the failure to protect residents from abuse. This included violations for failing to screen employees for a history of abuse or mistreatment and failing to develop and implement policies to prohibit abuse. There were six actual harm violations in this category.

D. Nursing Homes with a History of Noncompliance

Some of the nursing homes found to be causing actual harm to residents in the most recent state inspections have a history of serious noncompliance. Of the 12 nursing homes in the most recent inspections with violations at the actual harm level, five homes were also found to be causing actual harm in the immediately preceding inspection.

E. Potential for Underreporting of Violations

The report's analysis of the prevalence of nursing home violations was based on the data reported to HCFA in the OSCAR database. According to GAO, even though this database is "generally recognize[d] . . . as reliable," it may "understate the extent of deficiencies."[21] One problem, according to GAO, is that "homes could generally predict when their annual on-site reviews would occur and, if inclined, could take steps to mask problems otherwise observable during normal operations."[22] A second problem is that when GAO inspectors accompanied state inspection teams, they found that the state inspectors sometimes missed significant violations, such as unexplained weight loss by residents and failure to prevent pressure sores.[23] Consequently, it is possible that the prevalence of violations causing potential or actual harm may be higher than what is reported in this study.

There is reason to believe that the underreporting of violations may be especially pronounced in New York State, particularly in the downstate area. On average, the almost 300 nursing homes in New York City and Long Island are cited for only 2.1 violations of federal standards. By contrast, the national average is 5.8 violations per home; in California, homes are cited for an average of 11.4 violations.

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[21]GAO, *Nursing Homes: Additional Steps Needed*, *supra* note 12, at 30.

[22]GAO, *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight*, 4 (July 1998).

[23]*Id.* at 18-19. Federal inspectors also independently inspect a select number of nursing homes after the states have completed their inspections. A recent GAO report found that in 69% of the instances in which this follow-up federal inspection was conducted, federal inspectors found more serious deficiencies than the state inspectors had found. GAO, *Nursing Home Care: Enhanced HCFA Oversight of State Programs Would Better Ensure Quality*, 9 (Nov. 1999).

Nursing home advocates in New York believe that the lower rate of violations in New York nursing homes is the result of state inspectors not being thorough enough in their inspections. They do not believe that conditions in New York are superior to conditions in other parts of the country. In June 1995, the Nursing Home Community Coalition of New York State (NHCC), an advocacy group, studied New York's nursing home enforcement system and concluded:

> The significant drop in the frequency and severity of deficiencies across the state with an accompanying decline in enforcement actions, without any clear evidence that care has improved significantly and to the same degree as the decline, raises serious questions about the ability of the state to enforce its rules.[24]

According to nursing home advocates, the level of state regulatory activity appears to have increased over the past year.

HCFA has also recently criticized the New York State Department of Health for failing to identify serious violations during its annual inspections, including violations relating to pressure sores and improper restraint use. HCFA found that state inspectors even failed to identify "immediate jeopardy" violations -- the most serious category of violations -- when there was "overwhelming evidence of widespread quality of care problems." According to HCFA, state inspectors also failed to properly investigate complaints filed by residents and family members.[25]

IV. DOCUMENTATION OF VIOLATIONS IN THE INSPECTION REPORTS

Representatives for the nursing home industry have alleged that the actual harm violations cited by state inspectors are often insignificant. The American Health Care Association (AHCA), which represents for-profit nursing homes, has stated that the "overwhelming majority of nursing facilities in America meet or exceed government standards for quality."[26] AHCA also claims that deficiencies cited by inspectors are often "technical violations posing no jeopardy to residents" and that the current inspection system "has all the trademarks of a bureaucratic government

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[24]NHCC, *The Nursing Home Enforcement System in New York State -- Does It Work?* 6 (June 1995). Rep. Forbes have asked the minority staff to further investigate the differences in violation rates between New York and other states.

[25]Letter from Kathleen Gormaley (HCFA) to Laura Leeds (N.Y. State Dept. of Health) (March 2, 2000).

[26]Statement of Linda Keegan, Vice President, AHA, regarding Senate Select Committee on Aging Forum: "Consumers Assess the Nursing Home Initiatives" (Sept. 23, 1999).

program out of control."[27] As an example of such a technical violation, AHCA has claimed that the cancellation of a painting class would constitute a serious deficiency.[28]

At the national level, these assertions have proven to be erroneous. In response to AHCA's criticisms, GAO undertook a review of 201 random actual harm violations from 107 nursing homes around the country. GAO found that nearly all of these deficiencies posed a serious harm to residents. Of the 107 homes surveyed, 98% were found to have a deficiency that caused actual harm, including "pressure sores, broken bones, severe weight loss, burns, and death."[29] GAO found that many of the deficiencies affected multiple residents and that two-thirds of these homes had been cited for violations that were as severe as or even more severe than violations cited in previous or subsequent annual inspections.[30]

This report undertook a similar analysis at the local level. To assess the severity of violations at Long Island nursing homes, the minority staff examined the inspection reports for 23 noncompliant nursing homes in Nassau and Suffolk Counties. These inspection reports contained numerous examples of serious neglect and mistreatment of residents, including untreated pressure sores, preventable accidents, failure to provide proper medical care, and abuse of residents.

One of the most disturbing findings from the review of the inspection reports was that the serious violations were not limited to violations that caused actual harm (G-level and above). To the contrary, many of the violations classified as having a "potential for more than minimal harm" (violations at the D, E, or F levels) involved conditions and mistreatment that would be regarded by most families of residents as unacceptable. The severity of these violations indicates that serious deficiencies can exist even at nursing homes that are not cited for actual harm violations.

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[27]AHCA Press Release, *AHCA Responds to Release of General Accounting Office Study on Enforcement* (March 18, 1999).

[28]Letter from Sen. Charles E. Grassley to William Scanlon (GAO), 1 (May 27, 1999).

[29]GAO, *Nursing Homes: Proposal to Enhance Oversight*, *supra* note 13, at 2.

[30]*Id.* at 6. A subsequent GAO study in August 1999 examined several examples provided by AHCA of serious deficiencies cited by state inspectors that AHCA asserted were of questionable merit. For those deficiencies which it had sufficient facts to analyze, GAO concluded that the regulatory actions taken against these homes were merited. The GAO report stated: "In our analysis of the cases that AHCA selected as 'symptomatic of a regulatory system run amok,' we did not find evidence of inappropriate regulatory actions." Letter from Kathryn G. Allen (GAO) to Sen. Charles E. Grassley, 2 (Aug. 13, 1999).

The following discussion summarizes some examples of the violations documented in the inspection reports.

A. Failure to Prevent or Properly Treat Pressure Sores

Several violations documented in the inspection reports involved the improper prevention and treatment of pressure sores. This is a serious violation because pressure sores, if untreated or not properly treated, can lead to infection, muscle and bone damage, and even death.

Inspectors found a wide array of violations involving pressure sores in Long Island nursing homes. The violations included: leaving bedridden residents in the same position for hours, instead of regularly repositioning them, as required by standard medical procedures; failing to provide protective padding to residents at risk of developing pressure sores; failing to properly clean and dress sores; failing to provide special diets to residents with pressure sores; and not promptly notifying physicians of changes in resident conditions.[31]

Inspectors found many examples of improper care of pressure sores at one home. Residents suffering from sores were observed wearing urine and feces soiled clothes that were in direct contact with their sores. Inspectors found that the dressing over one resident's sore was "saturated with drainage from the wound." When this was brought to a nurse's attention, the nurse said "they change the dressing every other day and since it was not due until the next day she would leave it like it was." Another resident was found with seven stage IV sores, the most serious kind of pressure sore.[32]

At another home, residents with severe pressure sores were left in the same position without being toileted for hours. When inspectors examined one resident's pressure sore, they found the dressing to be wet. Another resident had a stage IV pressure sore that had not improved after almost a year of treatments.[33]

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[31]HCFA Form 2567 for Nursing Home in West Islip (Dec. 17, 1999) (H-level violation); HCFA Form 2567 for Nursing Home in Massapequa (Dec. 3, 1999) (G-level violation); HCFA Form 2567 for Nursing Home in Woodbury (Feb. 17, 1999) (H-level violation); HCFA Form 2567 for Nursing Home in Amityville (Sept. 4, 1998) (G-level violation) (this home has subsequently changed ownership).

[32]HCFA Form 2567 for Nursing Home in Woodbury (Feb. 17, 1999) (H-level violation). Pressure sores are measured on a scale ranging from stage I (least serious) to stage IV (most serious).

[33]HCFA Form 2567 for Nursing Home in Massapequa (Dec. 3, 1999) (G-level violation).

B. Abuse of Residents

Among the most serious violations found by inspectors at Long Island nursing homes was the failure of some homes to prevent physical abuse of their residents. For example:

- Inspectors found that a facility had failed to protect residents from an abusive resident, despite at least 25 reported incidents of abuse over a four-month period. These incidents included hitting, grabbing, shaking, kicking, slapping, pushing, and biting other residents, throwing chairs at other residents, squeezing the breasts of female residents, eating other residents' food, and turning over the chairs of residents while they were sitting in them.[34]

- Another home failed to protect residents from an abusive resident who fought with other residents and took their belongings. The abusive resident also smothered his roommate's face with a pillow and put soiled linen on the roommate.[35]

C. Failure to Prevent Falls and Accidents

Preventable falls and accidents were another common type of violation documented in the inspection reports. For example, inspectors found that one facility did not take sufficient precautions to prevent a resident from falling ten times over a two-month period. The resident sustained serious injuries requiring hospitalization, including head lacerations and a dislocated shoulder.[36]

At another facility, while the inspectors were on-site, a resident was observed walking away unescorted from the facility in the middle of the day. The inspectors then saw the home's administrator chasing after the resident. Upon investigating, the inspectors learned that the resident had been previously assessed as being at risk for wandering but that the facility had failed to develop an effective plan for monitoring the resident.[37]

One nursing home took the unusual measure of putting helmets on residents at risk of injuries from falls. Not only did the home fail to consider other less restrictive ways of protecting the residents, the helmets were not removed even when the residents were being

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[34]HCFA Form 2567 for Nursing Home in Great Neck (Sept. 3, 1999) (G-level violation).

[35]HCFA Form 2567 for Nursing Home in Island Park (Oct. 8, 1999) (D-level violation).

[36]HCFA Form 2567 for Nursing Home in Island Park (Oct. 8, 1999) (G-level violation).

[37]HCFA Form 2567 for Nursing Home in Middle Island (Nov. 10, 1999) (D-level violation).

supervised by staff as they ate with other residents in the dining room.[38]

D. Failure to Provide Proper Medical and Dietary Care

Several nursing homes in the sample also failed to provide basic medical and dietary care to their residents. For example, Long Island homes were found to have improperly dispensed medication[39] and to have ignored doctors instructions, such as failing to splint fractured bones[40] or provide required physical therapy.[41]

Other violations cited by nursing home inspectors related to improper and inadequate feeding of residents. At one home, improper nutrition caused the weight of some residents to drop under 80 lbs., well below ideal body weights.[42]

Inspectors found residents at several facilities being given solid food, even though the residents were supposed to be on a pureed diet.[43] While the inspectors were present at one of the homes, a resident began choking on a cookie that a nurse had given her, and the Heimlich maneuver had to be performed on the resident.[44]

In another case, a resident suffering from kidney failure was provided foods high in potassium, sodium, and phosphorous, all of which can endanger the health of renal residents.[45] At one home, a resident being fed with a feeding tube was left flat on his back, instead of having

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[38]HCFA Form 2567 for Nursing Home in Middle Island (Nov. 10, 1999) (D-level violation).

[39]HCFA Form 2567 for Nursing Home in Massapequa (Dec. 3, 1999) (D-level violation); HCFA Form 2567 for Nursing Home in Island Park (Oct. 8, 1999) (D-level violation); HCFA Form 2567 for Nursing Home in Rockville (May 20, 1999) (E-level violation)

[40]HCFA Form 2567 for Nursing Home in Hempstead (Jan. 13, 1998) (D-level violation).

[41]HCFA Form 2567 for Nursing Home in Amityville (Sept. 4, 1998) (G-level violation) (this home has subsequently changed ownership).

[42]HCFA Form 2567 for Nursing Home in Woodbury (Nov. 17, 1999) (D and E-level violations).

[43]HCFA Form 2567 for Nursing Home in Freeport (Oct. 1, 1999) (G-level violation); HCFA Form 2567 for Nursing Home in Rockville (May 20, 1999) (B-level violation).

[44]HCFA Form 2567 for Nursing Home in Freeport (Oct. 1, 1999) (G-level violation).

[45]HCFA Form 2567 for Nursing Home in Woodbury (Feb. 17, 1999) (H-level violation).

his head elevated, thus increasing the risk of aspiration.[46]

E. Other Violations

Other violations, while not necessarily causing immediate harm to residents, exemplified the callous attitude sometimes displayed by staff. In many cases, this attitude existed even when inspectors were on-site observing conditions in the facilities.

At one home, call bells went unanswered for long periods of time. A resident who experienced bowel incontinence was forced to spend hours cleaning herself because the staff did not respond to her call bells seeking assistance. Inspectors also observed a resident lying in bed wearing only a soiled diaper with the door to the room wide open. Even though staff were observed walking by the room, no one took the time to check on the resident, much less close the door to protect the resident's privacy.[47]

Inspectors also found several facilities that failed to lock supply rooms and supply carts containing harmful materials such as medical waste, garbage, cleaners, razors, toxic substances, and heavy oxygen tanks. These violations occurred even when the homes knew that inspectors were on-site. Numerous confused residents were observed wandering in the vicinity of these supply rooms and carts.[48]

One reason for the poor care provided by many homes is the fact that some nursing homes do not adequately train their staff. Inspectors examined the personnel records of 13 nurse aides at one home and found that all 13 had completed less than the required amount of inservice training for the previous year.[49]

V. CONCLUSION

The 1987 nursing home law was intended to stop abuses in nursing homes by establishing stringent federal standards of care. Although the law and its implementing regulations require appropriate standards of care, compliance by Long Island nursing homes has been poor. This

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[46]HCFA Form 2567 for Nursing Home in Hempstead (Jan. 13, 1998) (D-level violation).

[47]HCFA Form 2567 for Nursing Home in Woodbury (Feb. 17, 1999) (E-level violation).

[48]HCFA Form 2567 for Nursing Home in Middle Island (Nov. 10, 1999) (D-level violation); HCFA Form 2567 for Nursing Home in Woodbury (Feb. 17, 1999) (F-level violation); HCFA Form 2567 for Nursing Home in Hempstead (Jan. 13, 1998) (E-level violation).

[49]HCFA Form 2567 for Nursing Home in Amityville (Sept. 4, 1998) (C-level violation) (this home has subsequently changed ownership).

report reviewed the OSCAR database and a sample of actual state inspection reports. The same conclusion emerges from both analyses: many nursing homes on Long Island are failing to provide the care that the law requires and that families expect.